

Amnesty International Testimony

The Sale of Body Parts by the People's Republic of China

Before the

**Joint Committee Hearing: Committee on International Relations
and Committee on Government Reform & Oversight**

Presented by

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Thank you, Mr. Chairman, and distinguished members of this committee. Amnesty International is pleased to testify at this hearing. We are an international – grassroots – human rights organization which has over a million members around the world and over three hundred thousand members in the United States.

The hearing today is of great importance to Amnesty International. We have been reporting about the practice of harvesting organs from executed prisoners for several years. Despite international pressure, the practice still continues. We are not aware of any concrete steps taken by the Clinton Administration to raise this issue with the Chinese authorities. In addition, this issue was not addressed during the last Clinton-Jiang Summit so far as we know.

Amnesty International is concerned about the lack of attention given by the Clinton Administration to address the appalling human rights conditions in China. Improvements in China's human rights record have been seriously exaggerated, despite "token" releases of high profile political prisoners. Just as Wang Dan was released, Chinese authorities arrested several new prisoners for promoting independent labor unions and having "unauthorized" contact with foreign journalists, thus restocking their supply of hostages.

Thousands of political prisoners are still languishing in Chinese prisons today. The Clinton Administration seems to be more interested in high profile political prisoners than less known human rights activists. Amnesty International wishes to urge President Clinton to keep human rights as an integral part of his agenda during the Summit with Chinese President later this month.

As the first United States President to visit China after the 1989 Tiananmen Square massacre, President Clinton has a special responsibility of not compromising human rights for any other concerns.

We have released several reports detailing the human rights situation in China, including reports on torture, unfair trials, imprisonment of dissidents, mass executions, the wide-scale use of forced labor camps, widespread oppression in Tibet, persecution of religious groups, and the practice of forced abortion and sterilization to enforce the “one **child** policy”.

The harvesting of organs is directly connected to the execution of prisoners. More people are executed every year in China than in all other countries of the **world** combined. In China there are about 68 offenses punishable by death, including reselling value-added tax receipts, theft, burglary, hooliganism, seriously disrupting public order, pimping, trafficking of women, taking of bribes, corruption, forgery and tax evasion. Condemned **prisoners tend to be paraded at mass** rallies or through the streets before being privately executed.

Spates of executions often precede major festivals or international events and usually accompany official announcements of anti-crime campaigns. A ‘strike hard campaign’ against crime, for example, led to over 4,000 executions in 1996.

Execution is usually carried out shortly or immediately after the sentence is publicly announced. In Jilin province, for example, three men, **Tian Zhifia**, Tian Zhiquan and Zhaolian, were executed on May **31, 1996** – seven days **after** their arrest – for allegedly committing a robbery on May 21, 1996. Their trial, sentencing, as well as the hearing of one of the three men’s appeal and the review and approval of the three death sentences by a high court, all took place between their arrest on May 24 and May **28, 1996**. Some people are executed solely on the basis of confessions which may have been extracted under torture.

Harvesting Organs from Executed Prisoners

It **has** been known for some time that organs taken from executed prisoners are used for transplants in China. Amnesty International reported this practice in 1993 and called at that time for the Chinese government to ban the use of organs from executed prisoners without their free and informed consent. However, the use of organs from this source continues in China, reportedly on a widespread scale. In the absence of a system of voluntary death-related organ donation, the main source of organs in China is reported to be executed prisoners. The percentage of transplant kidneys estimated to be derived from executed prisoners has been put as high as 90%. Organs reported to have been harvested from this source include **corneas**, kidneys and hearts. A number of recent reports indicate that it is also possible for foreigners to travel to China and to buy transplants using organs from executed prisoners.

The Procedure

The details of the organ retrieval process are closely guarded by the Chinese government. Information has emerged largely through confidential statements given to Amnesty International and other organizations by security and health personnel who have been involved in the procedure. In the experience of one medical source who gave testimony for the report China: **Victim in their thousands: the death penalty in 1992**, the following procedure occurred when executions were imminent. The Head of the Intermediate People's Court gave notice of impending executions to the Deputy Head of the court's executive office, who in turn notified the **relevant** government Health Department. The Health Department official with responsibility for such cases then contacted the appropriate hospitals, giving the number and date of the executions and medical details of the condemned. In the experience of this source, use of organs was routine following executions.

Condemned prisoners who **are selected** to provide organs following **their** execution are subjected to **medical** investigations, including invasive procedures such as removal of blood samples **for** tests, generally without being told the reason that such tests are being done. **If** the death sentence is confirmed on appeal, the prisoner **is informed only a few hours** before the execution and may spend his last night handcuffed and shackled on a chair, watched by fellow detainees, to prevent attempted suicide or acts of insubordination. On the following day the execution may be preceded by a 'mass sentencing **rally**', during which the prisoner's name, crime and punishment are announced to a crowd while the prisoner is forced to stand with head bowed and hands tied behind his back. Finally, the prisoner is taken to the execution ground and put to death. Although the method of execution in China is specified as a single shot to the back of the head, there are reports that this may be altered to a shot to the heart if the prisoner's corneas are to be harvested.

Once the execution has been carried out, the body is removed to the designated hospital in an ambulance. On some occasions the transplant organs are removed from the body immediately in a vehicle parked at the execution field itself. Generally the body is then cremated and only the ashes returned to the family which is therefore unable to verify that organ retrieval has been carried out. If the family requests the return of the intact corpse, it is usually met with a bill for the expenses of the prisoner's upkeep during detention, which is often too large for the family to pay.

Consent

In April 1993, Jin Yongjian, China's ambassador to the United Nations (UN) in Geneva, stated before the UN Committee against Torture that organs have been used for transplant operations only rarely and **"with the consent of the individual"** In its August 1994 report on China, Human Rights Watch/Asia published the

Temporary rules concerning the utilization of corpses or organs from the corpses of executed criminals, a set of official regulations circulated in October 1984 to the High People's Courts, People's Procuracies, and the Departments of Public Securities, Health and Civil Affairs of each province, autonomous region and directly-administered city in China. Section 3 of the *Temporary rules* states:

3. The corpse or organs of executed criminals may be **provided for** use in any of the **following circumstances**:

1. No one **claims** the **body** or the **family** refuses **to claim** the **body**;
2. The executed criminal has **volunteered** to have his **corpse provided** to a **medical** treatment or **health** unit **for** use;
3. **The family consents to the use of the corpse**

However, multiple sources concur that transplants organs do not normally come from unclaimed bodies or **following consultation with the prisoner's family, and that consent for organ retrieval is rarely sought from the condemned prisoner**. Medical **investigations that are necessary prior to organ donation are performed without revealing to the prisoner the purpose of these investigations**. From the **time the death sentence is handed down and, in cases where the prisoner is appealing against the death sentence, during the time that his or her appeal is processed, the condemned prisoner is held in degrading conditions, often restrained with handcuffs or feet-shackles, or both. The prisoner is generally told about the failure of his or her appeal against the death sentence only hours before the execution.**

If consent for organ donation were sought, it is difficult to see how it could be truly free and informed under these circumstances. And if the prisoner wished to **withhold** consent, it is difficult to see how he or she could make this wish known in the hours prior to execution. Condemned prisoners have the right to write a will, but the authorities have the official power to censor it. Even if **a will** is written, there is no guarantee that it will make its way from the prisoner, via guards and prison officials, to the prisoner's family, particularly if it expresses **a determined wish to be spared organ retrieval**.

The performance on a prisoner of invasive medical investigations **that are not for that person's benefit, without explaining the purpose of the investigation and without gaining the prisoner's express consent, amounts to medical exploitations of that person and clearly is a form of degrading treatment which Amnesty International condemns**.

Medical Involvement in the Process of Organ Retrieval

The involvement of health professionals in the organ retrieval process begins prior to the execution, with medical investigation aimed at ascertaining the prisoner's suitability as an organ donor. However, Principle 3 of the UN

*Principles of **Medical Ethics Relevant** to the **Role** of **Health Personnel**, **Particularly Physicians**, in the **Protection** of Prisoners and Detainees against **Torture** and Other **Cruel, Inhuman** and Degrading **Treatment**, states:*

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Health professionals who take part in **pre-execution** investigations for organ transplantation are in breach of this principle, **and they** are also in breach of their ethical duty, set out both in the UN Principles of Medical Ethics and in the World Medical Association's **Declaration** of Tokyo, not to participate in forms of cruel, inhuman or degrading treatment.

After the execution, health professionals are involved in retrieval of organs from the body. This may occur at the site of the execution itself. Sources report the presence of unmarked vehicles at the execution ground within which organs are removed **from** the body by medical personnel.

*The **Temporary Rules concerning the utilization** of corpses of organs **from** the corpses of **executed criminals** state:*

The use of the corpses or organs of executed criminals must be kept strictly secret, and attention must be paid to avoiding **negative** repercussions. [The removal of organs] should normally be carried out within the utilizing [transplant] unit. Where it is genuinely necessary, then with the permission of the people's court that is carrying out the death sentence, a surgical vehicle from the health department may be permitted to drive onto the execution grounds to remove the organs, but it is not permitted to use a vehicle bearing health department insignia or to wear white clothing. Guards must remain posted around the execution grounds while the operation or organ removal is taking place.

The systematic involvement of medical personnel in a process that is intended to be kept secret from the public, and the clandestine nature of the procedure itself, suggests that this involvement is not in keeping with professional ethics and that the authorities are aware of that.

Hospitals receive payments from Chinese patients or their work units for performing transplantations with organs from executed prisoners. It is an open secret in neighboring Asian countries with long transplant waiting lists that a transplant can be arranged promptly in China in exchange for payment. In both cases, the fee paid probably greatly exceeds the treatment costs of the operation itself, violating **World Health Organization (WHO) Guiding principles on human organ transplantation (1991)** that stipulate that **payment** for transplants should be limited to a justifiable fee for the services rendered. The lucrative nature of the

organ transplant business means that hospital personnel send gifts to police officials who are involved in executions, hoping to ensure the future supply of organs.

Some concerns have also been expressed that priorities in organ allocation are based on nonmedical criteria such as political position or ability to pay high fees.

Lack of Due Process

The system of organ procurement from executed prisoners in China occurs against the background of a judicial system which fails to meet international standards at almost every stage from arrest to execution. Amnesty International has **repeatedly** highlighted the numerous **flaws** in the legal process that leads to capital punishment in China. The lack of legal **safeguards in** China raises **the** concern that the use of the corpse of executed prisoners as a source of organs may play a role in encouraging the **imposition** of the death **penalty**.

It is impossible to give an accurate figure for the number of people executed in China each year. Such statistics are considered a 'state **secret**' and are not made public. In 1996, Amnesty International monitored over 6,000 death sentences by Chinese courts, and recorded the executions of 4,367 prisoners. However, many capital cases are not publicized and do not come to the attention of Amnesty International and the true figures for both death sentences and executions are far higher than those given here.

Imposition of the death penalty is based on China's Criminal Law and Criminal Procedure Law, both of which were adopted in 1979 to provide fundamental legislation which had previously been nonexistent. Amendments to the Criminal Law, expanding the number of **offences** punishable by death, were made in 1982 and, as part of a nationwide 'campaign against crime', in 1983. Further amendments have been made since 1983. Today, approximately 65 **offences** are punishable by death in China, including many non-violent and economic crimes such as "speculation" and "bribery". In 1992 Luo Deming was sentenced to death for allegedly selling ordinary alcoholic spirits under the prestigious **Maotai** name. To Amnesty International's knowledge this was the first time in China that the death penalty had been applied for infringement of trademark rights.

Once under suspicion of a capital **offence**, defendants find themselves trapped in a legal process that is weighted heavily against them. The poor and **less-**educated are particularly ill-equipped to resist the procedure that is set in motion, since they are often unaware of their rights and of the legislation under which they may be sentenced to death, and their access to legal advice is often inadequate or even nonexistent.

The Criminal Procedure Law allows the police to hold suspects for at least four and a half months before a decision is taken on whether or not to prosecute

them. During this period, the police are able to interrogate the suspect but the suspect has no right of access to a **lawyer** or to meet with a judge. There have been numerous reports of **the use** of torture and physical intimidation to extract confessions during such interrogations. In *China: The Death Penalty*, Amnesty international documented cases in which official admissions were made that the death sentence had been handed down on the basis of confessions extorted through police mistreatment.

Once a decision is made to try a case, often after a period of several months' police detention, the detainee can seek the assistance of a lawyer. Normally, under the Criminal Procedure Law, the trial can take place just seven days after the defendant receives the bill of prosecution, leaving inadequate time for the preparation of an effective defence. In addition, under legislation adopted in 1983, some capital cases may be tried without the defendant having been given any advance warning of the trial. In such cases defendants are tried either without a lawyer or with a court-appointed lawyer who has had no time at all to prepare a defence. **Defence** lawyers are seriously handicapped by established judicial practices. They have **access** only to a part of the file concerning the defendant, they cannot confront witnesses and are effectively barred from challenging the validity of the charges. Some lawyers have been subjected to demotion, detention and even physical violence as a consequence of attempting to mount an adequate defence in criminal cases, so that many lawyers decline to take on criminal cases or, if they do take such cases, rarely try to prove the innocence of their clients.

In all events, the accused's defence is likely to have little effect on the verdict in the trial, since there is no presumption of innocence in Chinese legal practice. Decisions on guilt and innocence are generally made outside the court, by committees subject to political influence. In some instances a "preparatory court" (*yupei ting*) meets to decide on the cases on the basis of the police findings and the requisitions of the prosecution. "Major and difficult" cases, which include those liable to the death penalty, are submitted for determination to the court's "adjudication committee" (*shenpan weiyuanhui*), which makes decisions on the basis of files and without the presence of cases. In the overwhelming majority of cases known to Amnesty International, court verdicts are almost verbatim reproductions of the prosecutors' indictments.

Having been convicted and sentenced to death by this process, the defendant may lodge a single appeal to a higher court. The appeal process includes no hearing: the High Court merely reviews the files of the case together with any submission made by the defendant or lawyer. Once the sentence has been confirmed by the High Court, the defendant has, in principle, the right of petition for commutation of the sentence to the President of the Republic of the Standing Committee of the National People's Congress. There is no known record of such a commutation since at least the early 1980's. In fact, this right of petition for commutation is virtually non-existent in practice, since the condemned prisoner is

usually told of the failure of his appeal to the High Court only hours before his execution, and a petition for commutation does not suspend the execution of the sentence.

The lack of legal safeguards is a crucially important consideration in the process that leads to the removal of organs from the corpse of an executed prisoner. Given the close liaison between courts, health departments and hospitals over the distribution of transplant **organ**, the fact that organ transplantation represents a source of income for hospitals, and the fact that 'gifts' are reportedly circumstances convicted individuals will be condemned to die, and the execution scheduled, in order to fill **a need for** transplant organs. The Chinese legal system, riddled with flaws, provides no **protection** against such **a** development.

A Lethal Combination: the Market in Omans and Lack of **Legal Safeguards**

Given the deplorable lack of legal safeguards, there is **a real risk** that the decision to impose the **death** penalty, already a common **punishment in China**, and the timing of its execution, **will** be dictated at least partially by the existence of a **lucrative** market for **organs**.

The **well-established** market in **organs within** China is revealed in a number of prevailing conditions reported to Amnesty International, **particularly** the fact that transplant operations are an extremely lucrative source of income for hospitals. Hospitals receive payment from Chinese patients (or the patients' work units) for performing transplant operations with organs from executed prisoners. It is an open secret in neighboring Asian countries with long transplant waiting lists that a transplant can be arranged promptly in China in exchange for payment. In both cases, the fees paid probably greatly exceed the treatment costs of the operation itself.

In fact, it should not be surprising that Chinese hospitals are cashing in on the organ trade. In the Asian region **as a whole**, illegal human organ trafficking is highly profitable. In South Korea, for example, the Government announced on April 16 a comprehensive package of measures to curb what is described by Korean newspapers as a 'booming' organ market, with rates of \$25,000 to \$38,000 for a kidney, of which 10 or 20 percent goes to the trafficker.

The lucrative nature of the **organ** transplant business means that when there is an undersupply, hospitals have to 'compete' for organs. Sources that have spoken to Amnesty International report that Chinese hospitals' personnel send gifts to police officials who are involved in executions, hoping to ensure the future supply of organs.

The thorough involvement of the Chinese judiciary in this illegal organ market is confirmed by reports of the close cooperation between courts, government health departments **and** hospitals over the distribution of transplant organs, and the

evident cooperation of police and prison officials in accepting the “gifts” offered by hospital personnel.

Given the existence of a market in human organs, the lack of legal safeguards is a crucial loophole in the process that leads to the profitable harvesting of organs from executed prisoners. The gross inadequacy of legal safeguards and enforcement of existing law with regard to due process in the investigation and trial of accused prisoners, prevention of degrading treatment in detention, ethical requirements of health personnel, and obtaining consent for organ removal therefore allows the widespread practice of removal of organs from the corpses of executed prisoners. Amnesty International is concerned that in some cases convicted individuals may be condemned to die, and the execution scheduled, in order to fill a need for transplant organs. The Chinese legal system, riddled with flaws, provides no protection against such a development.

Conclusion

The use of organs from executed prisoners is reported to be the source of the overwhelming majority of transplant organs used in China. Despite official denials, **multiple** sources with direct experience of the practice concur that such organ procurement rarely, if ever, occurs with the prior consent of the prisoner, and, given the degrading conditions in which condemned prisoners are held in China, it is difficult to see how free and informed consent could actually be given by a condemned prisoner.

The process of organ procurement involves pre-execution medical investigations, the purpose of which is rarely if ever revealed to the prisoner. Medical personnel who take part in this practice are therefore breaching their ethical obligation to act for the benefit of patients, to only undertake medical procedures with informed consent and not to participate in degrading treatment, and are also violating a number of the **WHO's** guiding principles on organ transplantation. In view of the deplorable lack of legal safeguards in China's judicial system there is a real risk that the decision to impose the death penalty, already a common punishment in China, and the timing of its execution, will be dictated at least partially by the need to fill a need in the supply of transplant organs. Finally, the existence of a lucrative trade in organs based on prisoners with few if any legal rights pose a major obstacle to reform capital punishment practice and eventually to abolish the punishment.

In view of the gross inadequacy of current judicial safeguards in China, Amnesty International is calling on the Chinese government to stop the practice of organ procurement from executed prisoners immediately and, if it wishes to ensure a supply of transplant organs for those with genuine medical need, to institute a system of death-related and living-related donation that is truly voluntary and in accordance with the WHO's guiding principles. Amnesty International is also calling on Chinese medical associations to inform all Chinese health professional

that participation in executions, including ante-mortem and post-mortem removal of organs from condemned prisoners for transplantation, is unethical. Amnesty International urges the Chinese authorities to review the practice of the death penalty with a view to its curtailment and eventual abolition.

Recommendations

- We strongly urge President Clinton to raise the issue of organ **harvesting** from executed prisoners during his upcoming Summit with President Jiang.
- We urge the Chinese government to put an immediate end to the practice of harvesting organs from the bodies of executed prisoners without their consent.
- We urge the Chinese government to review the practice of the death penalty with a view to correcting the gross inadequacy of judicial safeguards against human rights abuses, and with a view to the curtailment of the use of the death **penalty**.
- We urge Chinese health professionals to refuse to participate in the unethical retrieval of organs from executed prisoners or the use of such organs, whatever the stage of the process in which they are involved
- We urge the Chinese Medical Association to adopt a policy against the retrieval of organs from executed prisoners or the use of such organs, in conformity with the consensus of the international medical community.

Thank you for inviting Amnesty International to testify on this important issue.